

Lon D. Meltesen  
Director  
Office of Fair Housing and Equal Opportunity  
U.S. Department of Housing and Urban Development  
Midwest Region Office, Region V  
Ralph H. Metcalfe Federal Building  
77 West Jackson Blvd., Room 2101  
Chicago, Illinois 60604

October 13, 2022

Dear Director Meltesen,

Complainants Environmental Transformation Movement of Flint, Flint Rising, and St. Francis Prayer Center (“Complainants”) write in response to Genesee Township’s Feb. 10, 2022, answer to complaint of discrimination in the above-captioned matter.

### Introduction

In violation of the Fair Housing Act (“FHA”), Title VI of the Civil Rights Act of 1964, and Section 109 of the Housing and Community Development Act of 1974, Complainants have alleged that Genesee Township has engaged in a pattern and practice of using its land use and zoning powers to place toxic, heavy industry proximate to majority Black residents, while opposing other more compatible and safer uses, such as additional residential development. Time and again, the Township’s actions have directly harmed the nearby Black residents of Flint and the only majority Black census tract in Genesee Township. Federal funding recipients such as Genesee Township have an affirmative obligation to take “reasonable action to ... overcome the consequences of ... prior discriminatory practice ... and to accomplish the purpose of [Title VI].”<sup>1</sup> Despite repeated allegations – virtually since the creation of the park decades earlier – that the siting of heavy industry at the Township/Flint border harms and violates the civil rights of Black residents, the Township has elected to continue its discriminatory practices, when it knew or should have known of the harm posed to Black residents. The Township also engaged in multiple departures from its own policies and procedures when approving the zoning and building permits for the Ajax facility, which is further evidence of discriminatory intent.

---

<sup>1</sup> 24 C.F.R. § 1.4(b)(6)(ii). Genesee Township’s status as a subrecipient of HUD funds (rather than an entitlement) does not diminish its duty to fulfill its civil rights obligations as a federally-funded entity under such laws as Title VI, the Fair Housing Act, and Section 109 of the Housing & Community Development Act. See 28 C.F.R. § 42.102(f); *see also Moreno v. Consolidated Rail Corp.*, 99 F.3d 782 (6th Cir. 1996) (en banc).

42 U.S.C. § 5304 (obligation to make certification at § 5304(a)(1); quoted text at § 5304(b)(2)). Disparate impact claims are also cognizable under Title VI in HUD administrative enforcement proceedings. 24 C.F.R. §§ 1.4(b)(1)(ii), (iv), (b)(2)(i), (b)(3).

Through months of research into archival records and legal pleadings, Complainants have further uncovered Genesee Township's history of land use zoning, which has concentrated heavy and light industry into an industrial park in the one census tract where the vast majority of its Black residents live and directly proximate to already overburdened, majority Black residents in Flint. Complainants' allegations of discrimination are far from new – indeed, for several decades, Black residents and advocates have alleged that the Township's concentration and promotion of this land for industry is harmful to the nearby majority Black residents and violates their civil rights. Its subsequent land use decisions, such as the approval of the Ajax asphalt facility and brazen nature by which it rejects ongoing cries of environmental racism and discrimination, continue and compound this harmful and discriminatory practice. At the same time, the Township also has a long history of opposition to other uses for the land, including the development of various kinds of affordable housing, which would have been more compatible to the health, safety, and well-being of the nearby residents. Due to the direct and ongoing policies and practices of the township, our clients and the communities they represent and are a part of continue to suffer.

The Township's actions also mirror those of the City of Chicago in *Southeast Environmental Task Force et al. v. City of Chicago*, where HUD recently issued a Letter of Finding of Discrimination, as a result of the City's practice of primarily placing heavy industry in majority minority neighborhoods without considering the cumulative impact on these neighborhoods, and its departure from policy and procedure when it attempted to move a recycling plant from a white to a majority minority neighborhood. For all of these reasons, HUD should issue a Letter of Finding of Discrimination against Genesee Township.

### The History of Concentrating Black Residents within Certain Areas of Genesee County

Concentrated Black population centers, such as the part of Genesee Township in Tract 122.02, arose through a persistent combination of governmental and private discrimination over decades in Genesee County, but especially important were the events occurring between the late 1950s and through the 1970s. At the time of the 1960 census, the City of Flint was 83% white, with the city's Black population largely concentrated in two neighborhoods, Floral Park and St. John's Street. The city's segregation index at the time was an astronomical 94.4, well into apartheid levels.<sup>2</sup> Living conditions in these neighborhoods were difficult. St. John's in particular was in close proximity to numerous pollution sources, including multiple Buick manufacturing plants and railyards, and housing conditions in the neighborhood were wretched. Dr. Highsmith reports about 90% of the housing units in St. John's were in substandard condition and the area was thick with industrial pollution. Yet with few other housing options available to Blacks, rents in those neighborhoods were exceedingly high and population density was off the charts.

Both Floral Park and St. John were slated for urban renewal projects, including the I-475 expressway construction, in Flint's 1960 master plan. Notably, a previous version of the I-475 plan routed the highway through Burton and would have avoided the demolition of Floral Park— but officials with Flint and the Michigan State Highway Department opted to place the route

---

<sup>2</sup> Michigan Civil Rights Commission, *Equal Housing Opportunities in Flint: Findings and Recommendations Based on a Public Hearing Conducted on November 29 and 30 and on December 1 and 9, 1966* (Mar. 7, 1967), attached as Ex. A.

through Floral Park instead, aiming in part to “remov[e] large numbers of poor black residents from the urban core.”<sup>3</sup> In all, these urban renewal projects would entail the displacement of residents from 3,200 Flint homes—about half of whom were Black.<sup>4</sup>

These urban renewal projects caused Black home ownership in Flint to drop from 50% to just 15%.<sup>5</sup> As the Michigan Civil Rights Commission explained, “[d]isplaced black families were limited in their choices, and prevented from considering the suburbs. The few instances when blacks broke the color line were soon nullified by flight and resegregation.”<sup>6</sup> Indeed, though first proposed in the early 1960s, the urban renewal project in of Floral Park and St. John and I-475 loop construction were delayed throughout most of the decade.<sup>7</sup> The loop did not open to traffic until the early 1970s, and construction was not completed until 1981. One reason for the delays was a lack of housing options for the displaced residents. With their neighborhoods slated for demolition, the homes in both neighborhoods deteriorated and were ultimately appraised for very low values that prevented many of the displaced Black homeowners from being able to purchase comparable replacement homes.<sup>8</sup> Many wound up with HUD-supported Section 235 housing, a program that would become notorious for poor home construction and predatory financial terms, in Flint or Beecher.<sup>9</sup> Many others moved into new public housing projects the Flint Housing Commission built within the city limits.<sup>10</sup>

By the late 1960s, however, several significant developments would radically change the racial landscape within the City of Flint. Having struggled to secure appropriate, racially-integrated sites on which to develop new public housing, the Flint Housing Commission took advantage of the public housing scattered sites program (then-called “Turnkey”), to begin acquiring and leasing housing throughout the city to eligible families irrespective of race.<sup>11</sup> As Black households began gaining access to homes in homogenously white neighborhoods, white residents began engaging in panic selling and relocating to the suburbs.<sup>12</sup> The pace of this white flight accelerated greatly after the Detroit riots of 1967 had spillover effects in Flint, and after Flint passed the nation’s first municipal open housing ordinance in 1968. From being an 83%

---

<sup>3</sup> See Highsmith at 178, citing John A. Ferris, “Staff Report and Recommendations” (May 2, 1966), Box 10, Folder 45 OBP.

<sup>4</sup> Ex. A.

<sup>5</sup> See Highsmith at 191, citing G. Dale Bishop and Janice K. Wilberg, “Occupied Housing Units by Tenure and Race,” in *A Demographic Analysis of Neighborhood Development Project Areas: Flint, Michigan* (1972); see Paul Rozycki, “Flint’s I-475 freeway and race: A concrete barrier, or a road to reconciliation?” *East Village Magazine* (Mar. 23, 2022), <https://www.eastvillagemagazine.org/2022/03/23/flints-i-475-freeway-and-race-a-concrete-barrier-or-a-road-to-reconciliation/>

<sup>6</sup> Michigan Civil Rights Commission, “The Flint Water Crisis: Systemic Racism through the Lens of Flint” (Feb. 17, 2017), <https://www.michigan.gov/mdcr/-/media/Project/Websites/mdcr/mcrc/reports/2017/flint-crisis-report-edited.pdf?rev=db527d0e6c404254892c84c907988934>

<sup>7</sup> See Highsmith at 182-83.

<sup>8</sup> See Highsmith at 183-84.

<sup>9</sup> See Highsmith at 201-13 (“On their own, the numerous reports documenting the shoddy construction and geographic concentration of the Section 235 units would have been sufficient to mar the image of the HUD Act . . . But the fleecing of poor buyers occurred at virtually every stage of the process. One of the most common schemes involved a practice known as ‘flipping,’ in which investors acquired ramshackle properties, completed only minor cosmetic repairs, and then resold them at inflated costs to unsuspecting 235 buyers.”).

<sup>10</sup> See Highsmith at 188.

<sup>11</sup> See Flint Renewal & Housing Dept., *Turnkey Method* (1968), attached as Ex. B.

<sup>12</sup> Highsmith at 193-98.

white city in 1960, Flint's Black population reached over 28% by the 1970 census, and 41.4% by the 1980 census.<sup>13</sup> Over that time frame, the overall population of Flint declined almost 20% (from nearly 197,000 persons in 1960 to just under 160,000 in 1980).

Looking to preserve racial segregation in housing, suburban whites in Genesee County (many of whom were the same people who had fled the city to avoid integration) sought to contain Genesee County's Black population within the City of Flint and the preexisting suburban concentrations. These suburban communities, including Genesee Township, pursued this objective through a range of means, both official and private.

Much of the housing constructed in the Flint area between 1900 and 1950 was subject to racially-restrictive covenants.<sup>14</sup> Though the Supreme Court ruled racially-restrictive covenants unconstitutional in 1948,<sup>15</sup> entrenched patterns of both open and covert discrimination continued long thereafter—such that, by the 1960s, “a harsh mix of housing discrimination, racial violence, and poverty” substantially restricted Flint's Black population to the Floral Park and St. John neighborhoods.<sup>16</sup> White realtors refused to show homes in white neighborhoods to Black buyers, and sometimes even refused to list homes for white sellers unless they agreed not to sell to Blacks.<sup>17</sup> Landlords refused to lease apartments to Black tenants.<sup>18</sup> Black realtors were denied access to the multiple listing service.<sup>19</sup> Black families also struggled to obtain financing for home purchases due to FHA redlining, which both limited where they could live and commonly forced Black home buyers to purchase homes through predatory land contracts.<sup>20</sup> Few white sellers were willing to accept Black buyers—and when such sales occasionally did happen, Black buyers commonly faced harassment and intimidation from their new neighbors.<sup>21</sup> School districts continuously re-drew school boundaries to maintain segregated schools (typically by adjusting boundary lines to exclude all Blacks from white schools, then freely granting transfers to white students seeking to leave predominantly Black schools while denying such transfers to Black students), thus further deterring and frustrating integration efforts.<sup>22</sup> With Blacks more heavily reliant on the rental housing market,<sup>23</sup> many Genesee County suburbs adopted zoning plans that effectively allowed only for the construction of single-family homes rather than multifamily apartments or sharply limited the areas in which multifamily dwellings could be constructed.<sup>24</sup>

---

<sup>13</sup> See Highsmith at 196-97.

<sup>14</sup> Highsmith at 32-34.

<sup>15</sup> *Shelley v. Kraemer*, 334 U.S. 1 (1948).

<sup>16</sup> Highsmith at 154.

<sup>17</sup> Michigan Civil Rights Commission, Flint Housing Hearing: General Background Information (1966), attached as Ex. C.

<sup>18</sup> Ex. A.

<sup>19</sup> *Id.*

<sup>20</sup> See Highsmith at 10-11.

<sup>21</sup> Ex. A.

<sup>22</sup> See Highsmith at 232-33.

<sup>23</sup> Note, however, that a 1976 study concluded that the inability of Black households to afford housing in white areas had little to do with the high degree of racial segregation in the Flint region. See Joe T. Darden, “The Residential Segregation of Blacks in Flint, Michigan, 1950-70” (Rev'd) at 19 (June 1976), <https://files.eric.ed.gov/fulltext/ED125965.pdf>

<sup>24</sup> See Highsmith at 216-21.

And many landlords simply refused to accept Black tenants.<sup>25</sup>

### Genesee Township's History of Racial Segregation and Racial Animus

The historical background behind Genesee Township's actions are highly relevant to an analysis to determine if the Township has violated civil rights laws. *See Avenue 6E Invs., LLC v. City of Yuma*, 818 F.3d 493, 508 (9th Cir. 2016) (holding that the city's "historical patterns of race and class" were relevant for considering if the facts established racial discrimination in housing). As described below, approval of the building permit, land sale and zoning for the Ajax plant are a continuation of Genesee Township's discriminatory "standard operating procedure" against communities of color.

For decades, Genesee Township has sought to maintain not only its racial boundaries but what benefits or deficits residents in the Township or directly adjacent to it received. Even as the public's consciousness about housing discrimination was raised, Genesee Township showed no interest in standing in opposition to it. For example, in 1966, upon hearing evidence of widespread housing discrimination in the Flint suburbs, the Michigan Civil Rights Commission ("MCRC") urged suburban governments to enact fair housing ordinances and to condition the approval of new subdivisions on anti-discrimination guarantees.<sup>26</sup> When the Flint Open Housing Ordinance initially failed in 1967, Flint's first Black mayor, Floyd J. McCree, noted the "blooming flower of housing discrimination in the Township and surrounding suburbs."<sup>27</sup> But Genesee Township did not enact any such ordinance—with Flint MCRC Director Olive Beasley noting in 1969 that "it would be a miracle" if Genesee Township or Mt. Morris were to adopt a fair housing ordinance.<sup>28</sup> To this day, Genesee Township has not enacted a fair housing ordinance.

Genesee Township also has a long history of opposing needed affordable housing development, including with the very census tract at issue now, despite demonstrated need. After the demolition of St. John, the area of Genesee Township corresponding to Tract 122.02 became the densest census tract in the County with the most pressing needs. A 1970 report of the Genesee County Plan Commission evaluated the rates of poverty and overcrowding by census tract. In the report, census tract 122.02 of Genesee Township, which was majority Black in the

---

<sup>25</sup> See Ex. A ("there appeared to be different patterns of discriminatory practices in large and small apartments. In smaller buildings vacancies would disappear between a phone call and a visit to the building; the larger apartments would accept an application and then 'forget about it.'").

<sup>26</sup> *Id.* at 17 ("The Commission urges Genesee County and municipalities and townships in the Flint metropolitan area to undertake as many of the above recommendations to the City of Flint as are feasible under their charters, particularly enactment of comprehensive fair housing legislation. Local units of government should make approval of new subdivisions contingent upon a written pledge of nondiscrimination in the sale of homes by the developer and/or his agents.").

<sup>27</sup> Edgar Holt Collection, archival records, Box 6, Open Housing, on file with the Sloan Museum, Flint, Michigan.

<sup>28</sup> Olive Beasley, State of Michigan Transmittal (June 4, 1969), attached as Ex. D.

1970 census,<sup>29</sup> was found to have the highest rate of overcrowding and poverty concentration.<sup>30</sup> As a result, the Plan Commission proposed that those areas should be targeted for code enforcement and housing rehabilitation. Yet, although new multifamily housing could have alleviated the poor housing conditions and overcrowding, what followed was a long pattern and practice by the Genesee Township Board of Trustees repeatedly voting to deny zoning approvals for new multifamily housing.

For example, the Township denied approval to expand an existing mobile home park in 1964,<sup>31</sup> denied approval for two proposed new mobile home parks in 1966<sup>32</sup> and a third in 1967,<sup>33</sup> denied approval a second time for expansion of the preexisting park in 1969.<sup>34</sup> Notably, opponents during one of the 1966 park approval processes insisted that new fair housing laws would prevent “weeding out problem people” and the local school board claimed that the new park would lower property values and overcrowd schools with large families.<sup>35</sup> The Township approved a decision to rezone agricultural land for townhouse apartments in 1967,<sup>36</sup> but quickly reversed the decision after community members protested. Like the arguments against the mobile home parks, the opponents’ contentions that apartment residents “would inundate the residential

---

<sup>29</sup> By the time the industrial park’s construction began, Tract 122.02 was already a majority Black (55.1%) census tract. Indeed, of the five census tracts that then comprised Genesee Township, Tract 122.02 contained nearly the entire Black population (92.1% or 2,270 of a total 2,464 residents) of the Township. Census Tract 122.02 includes a portion of Beecher, a five square-mile “urbanized suburb superimposed on portions of Mount Morris and Genesee Township.” The boundaries of Beecher are Carpenter Road to the south, Clio Road to the west, Stanley Road to the north, and Dort Highway to the east. See Highsmith at 202. As the historian Andrew Highsmith has detailed, Beecher was substantially all white until the late 1950s, when “an influx of black migrants helped to make it one of the only racially integrated communities in suburban Flint.” Highsmith at 203. Beecher was 10% African-American by 1960, and about one-third African-American by 1968. *Id.* By the time of the 1970 census the southeast portion of Beecher in Genesee Township was over 55% Black—one of only two suburban areas in Genesee County with a significant Black population (the other being in Census tracts 0103.02 and 0103.03 to the south of Flint city limits. That segregation has remained persistent throughout years.

<sup>30</sup> Appendix B., Ltr. from Schifano et al. to Haga (1970), attached as Ex. E.

<sup>31</sup> Flint Journal, “Suit seeks rezoning for trailer expansion” (Feb. 26, 1969), attached as Ex. F.

<sup>32</sup> See Flint Journal, “Board denies zoning request on 3 to 1 vote” (Sept. 27, 1966), attached as Ex. G; Flint Journal, “Kearsley Board tables trailer park proposal” (Aug. 16, 1966), attached as Ex. H, parts 1 and 2 (“Some persons noted the new trailer park would be forced to operate under the new open housing law now in the U.S. Senate. One resident charged the trailer park operator would not be able to choose his residents and weed out large families.”); Flint Journal, “Mobile Home Park Owners Hit Back At Critics on Issue of School Taxes (Aug. 30, 1966), attached as Ex. I, parts 1, 2, and 3 (“Many residents have adopted the attitude ‘mobile home parks are okay but I wouldn’t want to live next door to one’”)

<sup>33</sup> Flint Journal, “Genesee Township vetoes trailer park; word battle fails to materialize” (Mar. 8, 1967) (“Lynn Little, Flint attorney for a citizen group ... alluded to two trailer parks in the area [and] said a third ‘would do violence to the general residential area.’”), attached as Ex. J; Flint Journal, “Genesee Twp. gives final ‘no’ to rezoning plea” (May 26, 1967), attached as Ex. K.

<sup>34</sup> Flint Journal, “Suit seeks rezoning for trailer park expansion” (Feb. 26, 1969), attached as Ex. L; Flint Journal, “Genesee Twp. Grants One Zoning Request” (Oct. 28, 1966), attached as Ex. M. (apartment zoning request tabled)

<sup>35</sup> Flint Journal, “Kearsley Board Seeking Referendum on Trailer Park” (Sept. 21, 1966), attached as Ex. N, parts 1 and 2.

<sup>36</sup> See Flint Journal, “Genesee Twp. Board okays zoning plea” (June 12, 1967) (“About 75 persons showed up at Monday’s meeting to protest the request. The vote went 3-2...”), attached as Ex. O; Flint Journal, “Genesee Township board rejects rezoning for apartment complex” (July 25, 1967), attached as Ex. P; see also Flint Journal, “Genesee Twp Board delays zoning decision” (June 28, 1967), attached as Ex. Q (“the board, faced with more than 100 irate residents opposed to the rezoning proposal, unanimously agreed to refer the request to the Planning Commission...”).

areas” of Genesee Township and put too much stress on the schools were thinly-veiled dog whistles of racial animus.<sup>37</sup> In 1969, the City of Flint sought to annex 115 acres of vacant Genesee Township farmland for public housing development.<sup>38</sup> The Genesee Township Board of Supervisors opposed the annexation and urged residents to vote against it.<sup>39</sup> Today, what affordable housing is present within Genesee Township have a majority of white residents and the Township continues to have a lower amount of affordable housing when compared to other townships in Genesee County.<sup>40</sup>

### The Township’s Use of Zoning and Permitting Powers to Create the Carpenter Road-Dort Highway Industrial Park<sup>41</sup>

Around the same time that Genesee Township resisted efforts to develop new multifamily housing (despite being home to the most overcrowded and dilapidated census tract in the county), it zealously led efforts to bring in new manufacturing and commercial developments—including siting a new industrial park near the intersection of Carpenter Road and Dort Highway, in the midst of the majority-Black Tract 122.02.<sup>42</sup> The Township did so even though it knew it was important to keep industry separate from people and the environment.

At the time of its consideration, Genesee Township knew the proposed industrial park would be near, majority Black residential areas. By the time construction commenced on the Dort-Carpenter Road Industrial Park in 1979, which was listed as a top “A” priority of the Township,<sup>43</sup> the area was already heavily-populated with nearby affordable housing built in Flint, including River Park, a 180-unit public housing development built in 1969 due to the efforts of the NAACP-Flint chapter led by Edgar Holt, and Ridgecrest Village (a 163-unit, HUD-subsidized multifamily property built 1975), as well as Section 235 HUD housing, mobile home parks, and a number of other residential homes and developments. Genesee Township approved and aggressively built up the industrial park in that location even though Genesee County planning documents stressed the need for such parks to contribute to the quality of life and not have an adverse environmental impact.<sup>44</sup> Despite those considerations, Genesee Township aggressively approved building permits for new industry in the area, so much so that the Genesee County Metropolitan Planning Commission named Genesee Township one of its “worst offenders” for approving building permits the Metropolitan Planning Commission had

---

<sup>37</sup> Flint Journal, “Genesee Township Board Rejects Rezoning for Apartment Complex” (July 25, 1967), attached as Ex. R.

<sup>38</sup> Flint Journal, “Commission approves move to annex Genesee Township site” (June 22, 1965) (“the property is adjacent to the city limits on E. Carpenter Road east of N. Dort Highway”), attached as Ex. S.

<sup>39</sup> Flint Journal, “Annexation Foes Urged To Turn Out” (April 5, 1970) attached as Ex. T; Flint Journal, “Commission Hears Genesee Twp. Plan” (Dec. 10, 1969) parts 1 and 2, attached hereto as Ex. U.

<sup>40</sup> There are two subsidized, majority white developments in Genesee Township, Cedar Bend, a family housing development in census tract 112.14, and Kearsely-Daly Villa, an elderly housing development in census tract 120.06. Genesee Township is reported to have near the low-end of having affordable housing among other townships in the county. *Impediments to Fair Housing for City of Flint and Genesee County, Michigan* (2006) at 125 [http://gcmpc.org/wp-content/uploads/pdf/Genesee\\_County\\_AI\\_2006\\_by\\_LSEM.pdf](http://gcmpc.org/wp-content/uploads/pdf/Genesee_County_AI_2006_by_LSEM.pdf)

<sup>41</sup> The Township also identifies this park as the “Genesee Township Industrial Park.”

<sup>42</sup> Flint Journal, “Genesee Twp. Zoning Altered” (March 23, 1965), attached as Ex. V.

<sup>43</sup> Economic Development Commission of Genesee County, Fiscal Year 1980-81, *OVERALL ECONOMIC DEVELOPMENT UPDATE FOR GENESEE COUNTY, MICHIGAN* 13 (Dec. 1979), attached as Ex. W.

<sup>44</sup> *Id.* at 13-14.

recommended be denied. One official with the Metropolitan Planning Commission suggested that in granting these approvals the townships, such as Genesee, were prioritizing the expansion of their tax bases over “other community interests.”<sup>45</sup>

The siting and creation of the Dort-Carpenter Road Industrial Park was ultimately met with opposition, with the NAACP Flint chapter noting that Black households in the area were already overburdened by environmental harm and exposure. NAACP and Flint-Genesee United for Justice member Lillian Robinson led efforts to oppose the influx of toxic industry that compounded the harm to nearby, majority Black residents.<sup>46</sup> These actions further demonstrate that years before, the Township knew or should have known of the harm it was causing to nearby majority Black households.

Flint-Genesee United for Action, Justice, and Environmental Safety, NAACP Flint chapter, and several individuals, including Lillian Robinson, sued the state of Michigan’s Department of Environmental Quality (“MDEQ”), MDEQ Director Russell Harding, Governor John Engler, Genesee Township and Genesee Township Supervisor William Ayre, over the siting, construction, and permit approval of the Genesee Power Station, a wood-burning incinerator within the industrial park that would spew lead and other toxic chemicals into the air and surrounding community.<sup>47</sup> The plaintiffs alleged that the defendants’ actions and omissions violated civil rights laws and the Michigan Environmental Protection Act by siting the incinerator near Flint’s impoverished, already environmentally burdened, majority Black north end.<sup>48</sup> This plaintiffs alleged that this policy was part of a common tactic – to place the facility in the neighboring township, but for the harm to fall upon the city’s residents.<sup>49</sup> The plaintiffs accused the Defendants, including Genesee Township, of failing to evaluate the racial impact of the decision on minority communities in the state and in Genesee County who are already “host to a disproportionate burden of polluting sites” and failing to consider a less discriminatory alternative.<sup>50</sup> The plaintiffs specifically alleged that Genesee Township and Supervisor Ayres, approved the siting of the incinerator before it was approved by the state, even though it was in the immediate vicinity of several schools and “the area surrounding the industrial park, where the incinerator is currently under construction, is primarily residential and recreational” including “many single family home dwellings,” “two apartment complexes,” and “several trail home parks” where “people of color [are] . . . already inundated with environmental hazards.”<sup>51</sup> Like the complainants’ experience here, the plaintiffs accused Genesee Township of playing lip service to their serious concerns.<sup>52</sup> Ultimately, after a partial settlement that significantly reduced

---

<sup>45</sup> Flint Journal, “County Unit Hits Townships for ‘Ignoring’ Zoning Advice” (Oct., 29, 1968), attached as Ex. X.

<sup>46</sup> Genesee Township FOIA response, Binder 1 at 875, attached as Ex. Z.

<sup>47</sup> *NAACP-Flint Chapter, et al. v. John Engler, et al.*, No. 95-38228-cv, Plaintiffs’ Third Amended Complaint and Request for Injunctive Relief, attached hereto as Exh. AA.

<sup>48</sup> *Id.* at 1-2.

<sup>49</sup> Talia Buford and Kristen Lombardi, *Steel Mill that never was ‘casts a shadow’ on EPA Office of Civil Rights*, Center for Public Integrity, (Dec. 18, 2015), <https://publicintegrity.org/environment/steel-mill-that-never-was-casts-a-shadow-on-epa-office-of-civil-rights/>

<sup>50</sup> Ex. AA, at 1, 14, 18-23.

<sup>51</sup> *Id.* at 8.

<sup>52</sup> *Id.* at 9, ¶32. (“Plaintiffs first learned of the Genesee Incinerator in August 1991, when Flint Journal carried a story about a plan for its construction. Residents, alarmed at the prospect, invited Genesee Township Supervisor William C. Ayre, to a meeting to discuss their concerns. Mr. Ayre informed them that he would look into it, and promised to contact community leaders if there were any further developments. He never did.”)



the amount of lead paint-contaminated construction and demolition wood disposed of at the site, the incinerator was allowed to burn.<sup>53</sup> After that settlement, an injunction was entered against the state, barring it from granting air permits for new major sources and permits for major modifications to existing facilities in Genesee County.<sup>54</sup> Even after the township was accused of discrimination in the siting of Genesee Power Station, it pushed forward with the siting of even more toxic, heavy industry in proximate to Black communities. This includes the proposed placement of Select Steele Corporation's steel recycling plant within the industrial park. In 1998, the St. Francis Prayer Center again filed a civil rights challenge, alleging that allowing Select Steele would violate the civil rights of the majority Black residents in nearby Flint.<sup>55</sup> As is set forth in the complaint, Genesee Township proceeded down the same "business as usual" path when facilitating the placement of the Ajax facility in the park. Even after community members said that the Township's actions were discriminatory and that the Township risked another Title VI complaint, trustees made no effort to change course. Indeed, a lawyer for the Township said that given the broad authority under the Township's zoning laws, a nuclear plant could move into the industrial park and nothing could be done about it, causing several of the trustees to laugh.<sup>56</sup> Taken together, the Township's historical and current practices demonstrate a purpose and effect to use its land use and zoning powers to make the majority-Black area surrounding the park a sacrifice zone.

#### The Township's policies and practices violate (and can be remedied by) civil rights laws

In addition to violations of Title VI and Section 109, Genesee Township's actions violate the FHA by making housing unavailable to majority Black residents under 42 U.S.C. §3604(a), and by discriminating in the provision of services or facilities in connection with their housing under 42 U.S.C. § 3604(b). Regulations interpreting Sections 3604(b) prohibit "[l]imiting the use of privileges, services or facilities associated with a dwelling" because of race, color, religion, sex, disability, familial status, or national origin. 24 C.F.R. 100.65(b)(4). Genesee Township knowingly placed an industrial park, containing noxious and polluting industry, in the only majority Black census tract of the Township and directly proximate to a majority Black area in Flint, including two federally assisted housing developments where a majority of Black residents live. Genesee Township's industrial park zoning and siting decisions also disproportionately impact Black residents in violation of civil rights laws. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). Just like the plaintiffs in the *NAACP-Flint Chapter* case, the Township was warned – repeatedly, by the complainants, the EPA, and HUD - about the stark racial disparities created placing toxic industry proximate to majority Black residents, already disproportionately burdened by environmental harm. In both cases, the Township largely ignored those concerns, and justified their actions by implicitly or explicitly asserting that the polluters "promised to be [] good neighbor[s]."<sup>57</sup> In greenlighting the Ajax plant, the Township also departed from its zoning, permitting, and planning procedures and requirements, finding that

---

<sup>53</sup> Genesee Power Station originally described their business to state environmental officials as "burning demolished Detroit crack houses." Tom Stephens, *The Flint River Lead Poisoning Catastrophe in Historical Perspective*, Black Agenda Report (Feb. 17, 2016), [https://blackagenda.com/history\\_flint\\_river\\_enviro\\_racism?page=3](https://blackagenda.com/history_flint_river_enviro_racism?page=3).

<sup>54</sup> *NAACP-Flint Chapter, et al. v. John Engler, et al.*, No. 95-38228-cv Order Granting Plaintiffs' Motion for a Permanent Injunction, attached as Exh. BB.

<sup>55</sup> *Flint Rising et al. v. Genesee Twp.*, HUD Administrative Complaint (Dec. 15, 2021) at 3.

<sup>56</sup> Nov. 16, 2021 Coalition's Response to EGLE's Approval of Ajax's Permit, attached hereto as Exh. CC.

<sup>57</sup> *Flint Rising et al.*, at 14.

the facility was a conforming use under Section 1513 of the Township’s Zoning Ordinance, even though it requires both that “objectionable sounds, including those of an intermittent nature, shall be controlled so as not to become a nuisance to adjacent users” and that “[c]reation of offensive odors shall be prohibited.”<sup>58</sup> Neither the Planning Commission or Building Department made inquiries about objectionable sounds, anticipated noise pollution, or noxious odors from the facility. The Township’s multiple departures from its own policies and procedures is further evidence of discriminatory intent in violation of the FHA. *Greater New Orleans Fair Housing Action Center v. St. Bernard Parish*, 641 F.Supp.2d 563, 573-74 (E.D. La. 2009) (holding that the Parish departed from its zoning policies in violation of the FHA when it enacted a zoning moratorium in order block an affordable housing project); *Rivera v. Inc. Vill. of Farmingdale*, 784 F.Supp. 2d 133, 150-153 (E.D. N.Y. 2011 (summary judgment denied after plaintiffs presented evidence of four distinct departures from normal building permit approval procedures). Regardless, no municipality is free to use its zoning power with discriminatory intent or effect. *Swanston v. City of Plano*, 557 F.Supp.3d 781, 787 (E.D. Tex. 2021) (concluding that the city could not use its land use powers for a discriminatory purpose by denying a zoning accommodation for sober living homes); *U.S. v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974) (holding that the city’s passage of an ordinance prohibiting construction of multi-family dwellings was aimed at preventing Black residents from living in the city); *U.S. v. City of Parma*, 661 F.2d 562 (6th Cir. 1981) (finding that the city’s zoning policies had the effect of blocking building permits for low-income housing development and was evidence of a “consistent policy of making housing unavailable to black persons.”). Civil rights statutes such as the FHA should be broadly construed to effect their remedial purposes, including in cases such as here involving the discriminatory use of a jurisdiction’s land use and zoning powers. See, e.g., *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380 (1982) (rejecting an interpretation of the FHA that “undermines the broad remedial intent of Congress embodied in the Act”).

### HUD’s Letter of Finding in Chicago Is Directly Relevant to Flint Rising et al.’s Claims Here

The complainants’ assertions, in many ways, mirror the allegations advanced in the HUD administrative complaint, *Southeast Environmental Task Force et al. v. City of Chicago*. In that case, the complainants similarly alleged that the City of Chicago’s actions to move a waste recycling facility “continued a broader policy of shifting polluting activities from White neighborhoods to Black and Hispanic neighborhoods, despite the latter already experiencing a disproportionate burden of environmental harms.”<sup>59</sup> Residents in the impacted communities also strongly objected to continuing this pattern by the city of placing polluting industry in their neighborhoods, with one resident noting that “[t]ime and time again the city tries to bully us and stick us with everything the rest of Chicago doesn’t want.”<sup>60</sup> Like the complainants here, there was strong evidence that the Southeast side residents were disproportionately burdened by pollution and negative health effects and were considered an area of environmental justice concern.<sup>61</sup> In issuing a letter of finding pursuant to Title VI of the Civil Rights Act of 1964 and Section 109 of the Housing and Community Development Act of 1974, HUD found that the City of Chicago did not consider any less discriminatory alternatives, including other ways to improve

---

<sup>58</sup> *Id.* at 14-15.

<sup>59</sup> U.S. Dep’t. of HUD Letter of Finding to the City of Chicago, (July 19, 2022), at 2.

<sup>60</sup> *Id.* at 6 fn. 25.

<sup>61</sup> *Id.* at 5.

the Facility’s environmental controls other than moving it to the Southeast Neighborhoods or the consideration of other potential sites that could have had less of an environmental impact.<sup>62</sup> Similar to the Genesee Township Planning Commission, the City of Chicago’s Zoning Board of Appeals only did a cursory review of the underlying facts, largely based upon what was submitted by the recycling facility, before granting the special use permit, and failed to follow its procedures to only grant a permit if it does not have a significant adverse impact on the general welfare of the neighborhood or community.<sup>63</sup> HUD also found that the City, pursuant to its industrial zoning policies for industry, primarily placed heavy industry in majority minority neighborhoods, and failed to consider the cumulative impact on these neighborhoods.<sup>64</sup>

Genesee Township’s responses in many ways also mirror the problematic thinking of the City of Chicago in terms of the defense of a policy that concentrates industrial parks in majority minority neighborhoods. Genesee Township strangely argues based on 1970 census data that because most of the other census tracts surrounding Tract 122.02 were predominantly white (including all of the adjoining census tracts within Genesee Township itself) in 1979, siting the industrial park in Tract 122.02 did not and does not reflect a policy of concentrating industrial land uses where Blacks live. HUD should reject this semantic reframing of the data: of the five census tracts within Genesee Township, the only one selected for an industrial park had over 92% of the Township’s Black residents. Moreover, the most significant impacts of the pollution emanating from the industrial park are felt in the communities within Tract 122.02—especially those nearest the actual pollution sources. Any impacts on communities in nearby census tracts are lighter than in the area immediately near the concentrated pollution from the industrial park. Far from disproving complainants’ allegations of discrimination, the 1970 census data demonstrate how Genesee Township’s historic actions reflect the widespread practice of isolating communities of color in environmentally hazardous “sacrifice zones” created through multiple, overlapping layers of discriminatory decisions regarding land use, transportation, housing, and other services.<sup>65</sup> This was the backdrop against which Genesee Township created the industrial park in 1979, and since then the Township has sited all industrial pollution sources in that area and that area only.

In this context, the presence of other industrial infrastructure and conveniences for the production of asphalt hardly justifies Genesee Township’s continuous approval of new industrial activities in the same location. On the contrary, siting even more pollution sources in this same small area only deepens and perpetuates the generational harms flowing from Genesee Township’s original decision in 1979 to concentrate all heavy and light industrial activities where the local Black community resides, while at the same time opposing other opportunities, such as the development of affordable housing. Approving the new Ajax facility on top of preexisting pollution sources, with no substantial consideration of the cumulative impacts its

---

<sup>62</sup> *Id.* at 10.

<sup>63</sup> *Id.* at 13.

<sup>64</sup> *Id.* at 14, 17.

<sup>65</sup> See, e.g., Chloe K. Bell, “The Lasting Impact of Housing Discrimination on Industrial Development, Environmental Injustice, and Land Use” at 17 (Oct. 1, 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3940662](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3940662) (“[P]eople of color make up the majority (56%) of those living in neighborhoods within two miles of the nation’s commercial hazardous waste facilities, and nearly double the percentage in areas beyond two miles (30%).”), *citing* Robert D. Bullard, *Sacrifice Zones: The Front Lines of Toxic Chemical Exposure in the United States*, 119 ENV’T HEALTH PERSP. A266 (2011).

noise, dust, and toxins would have on the surrounding residents, suggests the Township must already regard the area as a sacrifice zone and shows gross, if not willful indifference to the mostly Black families and individuals who live there.

For all of these reasons and the reasons set forth in the complaint, HUD should issue a Letter of Finding of Discrimination against Genesee Township. Please contact us if you have additional questions.

Sincerely,

Katherine E. Walz  
One of the attorneys for the complainants